RECEIVERS—BONDS—LIABILITY OF SURETY—GOOD FAITH—LESTER v. LAWYERS' SURETY CO., 63 N. Y. Sup. 804 (App. Div.).—An action, based on a receiver's disobedience of an order of the appellate court requiring him to pay out money, was brought against the surety on the receiver's bond. *Held*, that the defendant may show excuse for the apparent disobedience. Van Brunt, P J., and McLaughlin, J., dissenting.

When a receiver disobeys an order of court, his surety cannot be held liable unless by express terms to such orders he is brought himself into privity with his principal. *Thompson* v. *McGregor*, 81 N. Y. 592; *Douglass* v. *Howland*, 24 Wend. 25. The surety escaped by showing that previous to the order of the Appellate Court the receiver had paid the money in pursuance of an order of the trial court, which the Appellate Court reversed. *Lovett* v. *Ger. Ref. Church*, 12 Barb. 67; *Simpson* v. *Hornbeck*, 3 Lans. 53. Whether or not said payment was made in good faith is a question for the jury.

SLANDER—PROVINCE OF JURY—FRIEDBURG v. NUDD, 60 Pac. Rep. (Kan.) 476.—*Held*, in an action for slander, that the province of the jury extends not only to determining the language used, but also to construing what it means, and instruction is error to the effect that if the jury find certain words were used, then they must find slander therefrom. The entire question is held one of fact. *Royce* v. *Maloney*, 5 Atl. (Vt.) 395; *Riddell* v. *Thayer*, 127 Mass. 487; *Vanderlip* v. *Roe*, 23 Pa. St. 84. But this doctrine is qualified, Judge Starrett dissenting, in *Ry. Co.* v. *McCurdy*, 8 Atl. (Pa.) 230.

STATUTE OF LIMITATIONS—BURDEN OF PROOF—GUPTON v. HAWKINS, 35 S. E. 229 (N. C.).—Where in an action on a bond the statute of limitations was pleaded as a defense. *Held*, the burden of proof is on the plaintiff to prove that the statute has not run. *Grant* v. *Burgwyn*, 84 N. C. 560; *Brice* v. *Brice*, 2 Ind. 87.

STATUTES OF LIMITATION—WHICH GOVERNS—STATUTORY LIABILITIES—BRUNSWICK TERM. CO. v. NAT. BANK OF BALTIMORE, 99 Fed. Rep. 635.—*Held*, in an action brought in Maryland v. defendant bank as a stockholder in an insolvent Georgia bank on a liability created by statute, the Georgia statute of limitations and not the Maryland one governs. Brawley, J., dissenting. The general rule is that the lex fori controls the remedy, and the statute of limitations pertains to the remedy. The statute of the State, therefore, in which the action is brought applies. But where the liability is purely a statutory one, it apparently forms an exception to the rule. The *Harrisburg*, 119 U. S. 199; *Hlash* v. *Conn.*, 109 U. S. 371; *Fennell* v. *Southern Kas. R. R.*, 33 Fed. Rep. 427, seems to indicate this. It is clear that no action can be maintained anywhere on such a liability when the statute has run against it in the State giving it. *Krogg* v. *A. & W. P. R. R.*, 77 Ga. 202; *Eastwood* v. *Kennedy*, 44 Md. 563; *Halsey* v. *McLean*, 12 Allen (Mass.) 439; *P. R. R.* v. *Hine*, 25 Ohio St. 629. So it seems only fair, as this case holds, to compensate for this restriction by allowing the action to be maintained till it is barred in the State creating it.

TRADE-MARK — CORPORATE NAME—EXCLUSIVE RIGHT—HYGEIA DISTILLED WATER CO. v. HYGEIA ICE CO., 45 Atlan. 957 (Conn.). — The plaintiff had adopted the word "Hygeia" as a trade-mark to designate its product of distilled water and beverages made therefrom. The defendant adopted the same word to designate its products and was sued by the plaintiff for infringement. *Held*, that the defendant could be enjoined.

This case is peculiar, in tha tthe word "Hygeia" permits of two separate and distinct meanings. The word originally was used as the name of a mytho-

logical person. Later on it was adopted as a term synonomous with health. Under this latter signification, as indicative of quality, the decisions of numerous cases would clearly have given the defendant the right to use the term. *Russia Cement Co.* v. *Le Page*, 147 Mass. 211; *Ginter* v. *Kinney Tobacco Co.*, 12 Fed. Rep. 782. The facts brought out by the evidence, however, showed that the plaintiff had adopted it under its original meaning, and thus it could be used as a trade-mark. *Edmonds* v. *Benhow*, Seton (4th ed.) 238; *Barrows* v. *Knight*, 6 R. I. 434.

TRUST DEED—ATTORNEY'S FEES—TURNER v. BAGER, 35 S. E. 592 (N. C.)—A provision in a deed of trust that a fee of 5% should be paid for the services of an attorney in case of foreclosure. *Held*, to be invalid as against public policy.

We have failed to find any direct support for this decision, but the doctrine of a long line of decisions respecting the invalidity of provisions for fees, in the collection of promissory notes and kindred matters seems to have been slightly extended by the present case to embrace the facts involved. *Bullard* v. *Taylor*, 39 Mich. 137; *Bank* v. *Sevier*. 14 Fed. Rep. 662.

VENDOR'S LIEN—WAIVER—CHASTAIN v. HAINES, 27 Sou. Rep. 510 (Ala.).—Where complainant sold land, the purchase money of which was all paid save $89.00, and he refused to execute a conveyance until the balance was paid, which amount, however, was disputed, and the parties formally agreed to abide by the decision of arbitrators chosen. *Held*, that when the arbitrators decided the amount due to be $5.20 and ordered it paid in seven months and an immediate conveyance to be made by the other party, a failure of the vendee to pay the $5.20 when agreed revives the vendor's lien for the $89.00

It seems rather strange that after a proper award by arbitrators that a lien for original purchase money should revive; but the present case holds that the foregoing facts are not sufficient to remove the presumption existing in favor of the retention by the vendor of his equitable lien for unpaid purchase money. *Pam. Eq. Jur.* 1250. *Thompson* v. *Sheppard*, 85 Ala. 611.

VOID BONDS—STATUTE LEGALIZING—RETROACTIVE EFFECT—N. Y. LIFE INS. CO. v. COMISSIONERS, 99 Fed. Rep. 846.—A county issued bonds to build an armory, under a statute subsequently adjudged void. The Legislature then passed a statute legalizing the bonds, and giving the bondholders an action against the county for their value.

Held, such statute was unconstitutional as creating a new right rather than a new remedy, and was repugnant to the clause in the Ohio Constitution against retroactive laws. Where the natural justice of it is clear, it seems the legislature has such power. *Board of Education* v. *State*, 51 Ohio 531. But it was considered that here the juster remedy would be to recover against the property itself.

VOID MUNICIPAL BONDS—RECOVERY IN ASSUMPSET—TRAVELLERS' INS. CO. v. MAYOR ETC., OF JOHNSON CITY, 99 Fed. Rep. 663.—Where a city issued void bonds to subscribe for stock to construct a railroad and depot, which were subsequently built and the stock delivered and retained, a purchaser of such negotiable bonds, payable to bearer, could not recover from the city for money had and received, since the construction of the railroad and depot on the railroad's own property conferred no such direct benefit as would raise an implied promise to pay; and the stock retained was void in its hands.

This is held to be the same in principle as the enhancement of one man's land by improvements made on another's where no promise is raised. *R. R. Co.* v. *Bensley* 664 U. S. App. 115. But where the city receives money or property into its actual possession, there can generally be a recovery. *Read* v. *City of Plattsmouth*, 107 U. S. 568; *Chapman* v. *Douglass County*, 107 U. S. 348; *La.* v. *Wood*, 102 U. S. 294. In *Parkersburg* v. *Brown*, 106 U. S. 487, where void bonds were issued to establish a manufacturing plant, the bondholders to follow the property and proceed in rem.